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June 3, 2020

BY ECF

Hon. Jesse M. Furman
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

The Government is directed to file a response no later than June 5, 2020; no reply absent leave of Court.

SO ORDERED:

June 3, 2020

Re: U.S. v. Baranco (JMF)
20 Cr. 135

Dear Judge Furman,

I represent Edgardo Baranco, Jr. in the above captioned case. He is currently on home incarceration with electronic monitoring. I am writing to respectfully request that Mr. Baranco, Jr. be allowed outside of his home for at least one hour per day, seven days per week, for some exercise and fresh air. He will remain in his current Brooklyn neighborhood during this outdoor period. Furthermore, since he is also on electronic monitoring, pre-trial services will always be aware of his location. I have already discussed this request with the government and with pre-trial services and they are opposed to Mr. Baranco, Jr. being allowed outside for any period of time.

However, if Mr. Baranco, Jr. was incarcerated in an actual jail facility, under the law he would be entitled to time outside. Courts have long recognized an inmates right to engage in outdoor exercise. The Court has already found, based on clearly established law in this Circuit, that “exercise is one of the basic human needs protected by the Eighth Amendment.” *See Williams v. Good*, 111 F.Supp.2d 280 at 292 (S.D.N.Y. 2000) (citing *Williams v. Greifinger*, 97 F.3d 699, 704 (2d Cir.1996) and *Anderson*, 757 F.2d at 35). There is



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a substantial agreement among cases in this area that some form of regular outdoor exercise is extremely important to the psychological and physical well-being of inmates. *See Frazier v. Ward*, 426 F.Supp. 1354, 1367-69 (N.D.N.Y.1977); *Rhem v. Malcolm*, 389 F.Supp. 964, 972 (S.D.N.Y.). In *Spain v. Procunier*, 408 F.Supp. 534, the court found “(t)hat the denial of fresh air and regular outdoor exercise and recreation constitutes cruel and unusual punishment,” and ordered defendants to accord plaintiffs the right of outdoor exercise one hour per day, five days a week unless inclement weather, unusual circumstances, or disciplinary needs. *Id* at 547. The Supreme Court of the United States affirmed that order. *See Spain v. Procunier*, 600 F2d 189 (J. Kennedy, 1979).

Even though Mr. Baranco, Jr., is not currently being housed in a Federal jail, his bail conditions ultimately make him an inmate. He is required to be in his home twenty-four hours per day, and this requirement is starting to negatively affect his mental and physical health. I therefore request that the Court modify his bail conditions to afford him the opportunity to partake in regular outdoor exercise.

Very truly yours,

Christine Delince, Esq.